



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/100,934 06/22/98 STOUT

W 9278

EXAMINER

TM02/1214

CLIFFORD W. BROWNING  
WOODARD EMHARDT NAUGHTON MORIARTY  
& MCNETT  
111 MONUMENT CIRCLE, SUITE 3700  
INDIANAPOLIS IN 46204-5137

PARDOL T

ART UNIT

PAPER NUMBER

2171

DATE MAILED:

12/14/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

**Advisory Action**Application No.  
**09/100,934**

Applicant(s)

**Stout**

Examiner

**Thuy Pardo**Group Art Unit  
**2171****THE PERIOD FOR RESPONSE: [check only a) or b)]**

- a) ☐ expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☐ Appellant's Brief is due two months from the date of the Notice of Appeal filed on \_\_\_\_\_ (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Nov 29, 2000 has been considered with the following effect, but is **NOT** deemed to place the application in condition for allowance:

- ☐ The proposed amendment(s):

- ☐ will be entered upon filing of a Notice of Appeal and an Appeal Brief.
- ☐ will not be entered because:
- ☐ they raise new issues that would require further consideration and/or search. (See note below).
  - ☐ they raise the issue of new matter. (See note below).
  - ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
  - ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- ☐ Applicant's response has overcome the following rejection(s): \_\_\_\_\_  
\_\_\_\_\_

- ☐ Newly proposed or amended claims \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.

- ☒ The affidavit, exhibit or request for reconsideration has been considered but does **NOT** place the application in condition for allowance because:

the showing of diligence has not been met (see attached)

- ☐ The affidavit or exhibit will **NOT** be considered because it is not directed **SOLELY** to issues which were newly raised by the Examiner in the final rejection.

- ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: \_\_\_\_\_

Claims objected to: \_\_\_\_\_

Claims rejected: 1-4

- ☐ The proposed drawing correction filed on \_\_\_\_\_ ☐ has ☐ has not been approved by the Examiner.

- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

- ☐ Other

  
**WAYNE AMSBURY**  
**PRIMARY PATENT EXAMINER**

1. Applicant's Request for Consideration filed on November 29, 2000 in response to Examiner's Final Office Action has been reviewed.
2. The exhibit is, as stated in the Declaration, an act of conception but not a reduction to practice.
3. Applicant relies on filing of the application for constructive reduction to practice on June 22, 1998.
4. The claim of diligence is not complete (see MPEP 2138.06), "An applicant must account for the entire period during which diligence is required. *Gould v. Shawlow*, 150 USPQ 634, 643 (CCPA 1966) (Merely stating that there were no weeks or months that the invention was not worked on is not enough); *In re Harry*, 142 USPQ 164, 166 (CCPA 1964) (statement that the subject matter "was diligently reduced to practice" is not showing but a mere pleading)". In particular, the entire initial period must start prior March 08, 1996 and show diligence up to the part of reduction to practice, June 22, 1998. Dates must be established for items such as the effects of the surgery.
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thuy Pardo, whose telephone number is (703) 305-1091. The examiner can normally be reached Monday through Thursday from 6:30 AM to 5:00 PM.

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Art Unit: 2171

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas G. Black, can be reached at (703) 305-9707. The fax phone number for this Group is (703) 3085403.

Any inquiry of a general nature of relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-9600.

6. **Any response to this action should be mailed to:**

**Box AF**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

(703) 308-9051, (for formal communications; please mark "EXPEDITED  
PROCEDURE")

**Or:**

(703) 308-5359, (for informal or draft communications, please label  
"PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington. VA.,  
Sixth Floor (Receptionist).



Thuy Pardo  
December 06, 2000



WAYNE AMSBURY  
PRIMARY PATENT EXAMINER